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UNUM LIFE INSURANCE COMPANY  
OF AMERICA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

OLIVIA TORRES,

Plaintiff,

vs.

UNUM LIFE INSURANCE COMPANY OF  
AMERICA,

Defendant.

) Case No.: C08-01940 MHP ADR

) JOINT CASE MANAGEMENT  
) STATEMENT AND  
) (PROPOSED) ORDER

) DATE: August 18, 2008  
) TIME: 4:00 pm  
) JUDGE: Hon. Marilyn Hall Patel  
) DEPT.: Courtroom 15, 18<sup>th</sup> Floor

JOINT CASE MANAGEMENT STATEMENT

CASE NO. C08-01940 MHP ADR

1 Pursuant to Local Rule 16-0 and Federal Rule of Civil Procedure 26(f), plaintiff Olivia  
2 Torres ("plaintiff") and defendant Unum Life Insurance Company of America ("Unum")  
3 respectfully submit this Joint Case Management Statement in connection with the case  
4 Management Conference currently scheduled for August 18, 2008 at 4:00 pm.

5 **1. Jurisdiction and service.**

6 This Court has diversity jurisdiction pursuant to 28 U.S.C. §1332 (a). All parties have  
7 been served and have appeared.

8 **2. Facts.**

9 Plaintiff was insured under a non-ERISA group disability insurance policy issued to her  
10 employer, the City of Alameda, through Unum Life Insurance Company of America. Plaintiff  
11 became disabled on October 31, 2002. She applied for and was awarded long-term disability  
12 benefits from January 29, 2003 until September 4, 2003. In consultation with a medical  
13 consultant, Unum determined that plaintiff was able to work in her occupation and therefore no  
14 longer satisfied the policy definition of disability. Unum so advised plaintiff in September 2003.  
15 Plaintiff appealed Unum's decision and, after a further medical review, Unum concluded that  
16 plaintiff's claim was payable through November 19, 2003, but not beyond that date. Unum wrote  
17 plaintiff on July 30, 2004, to advise her of this decision.

18 In June 2005, in accordance with its agreement with the California Department of  
19 Insurance, Unum sent plaintiff an invitation to participate in its Multistate Claim Reassessment  
20 process, an administrative reevaluation of claims that had been denied during a specified period.  
21 On October 19, 2006, Unum sent an eight-page form to plaintiff's attorneys, advising that she  
22 had 60 days to gather and submit certain information or to request an extension of time to do so.  
23 Plaintiff, through her attorneys, asked for an extension of time on January 17, 2007, beyond the  
24 specified 60-day deadline. Unum advised her on January 18, 2007, that she would not be able to  
25 participate in the reassessment process. Plaintiff brought this action on April 11, 2008, alleging  
26 claims for breach of contract, fraud, bad faith and intentional infliction of emotional distress.  
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1 She seeks benefits of approximately \$41,791.00, general damages of \$100,000 and attorney fees  
2 of \$300,000.

3 The parties had reached an agreement on a monetary amount to settle the case, but the  
4 proposed settlement fell apart over non-monetary terms.

5 **3. Legal issues.**

6 **Plaintiff:**

7 Plaintiff contends that the primary legal issues are whether she was entitled to benefits  
8 under the terms of the Policy and whether Unum committed breach of contract, fraud, bad faith,  
9 or intentional infliction of emotional distress.

10 Plaintiff also contends that post-litigation settlement conduct by Unum was improper and  
11 proposes to amend her complaint to allege a class action.

12 **Unum:**

13 Unum contends that plaintiff's bad faith and intentional infliction claims are barred by the  
14 two-year statute of limitations. Unum also contends that post-litigation settlement discussions are  
15 privileged, confidential, and inadmissible under Federal Rule of Evidence 408, and that a class  
16 action is not appropriate.

17 **4. Motions.**

18 Plaintiff and Unum anticipate filing motions for summary judgment concerning one or  
19 more of the above-referenced issues.

20 **5. Amendment of pleadings.**

21 Plaintiff intends to move to amend the complaint and allege unfair settlement practices.  
22 She is reviewing whether or not to do this on an individual or classwide basis.

23 **6. Evidence preservation.**

24 The parties have taken steps to preserve evidence relevant to the issues reasonably  
25 evident in this action since the filing of the complaint.  
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1           **7. Disclosures.**

2           Plaintiff has served her Initial Disclosures. Unum will have done so by the date of the  
3 Case Management Conference.

4           **8. Discovery.**

5           Based upon the present state of the pleadings, the parties request that discovery be  
6 completed, as follows. This timetable may require modification if the court allows the proposed  
7 amendment of the complaint:

8           Disclosure of witnesses and completion of discovery:           January 23, 2009

9           Disclosure of expert witnesses:                                   February 7, 2009

10          Completion of discovery from experts:                       April 7, 2009

11          **9. Class actions.**

12          See items 3 and 5 above.

13          **10. Related cases.**

14          This case is not related to any other case pending in this district, including the bankruptcy  
15 courts in this district.

16          **11. Relief sought.**

17          Plaintiff seeks disability benefits from November 19, 2003, at \$1,667.00 per month for 12  
18 months plus a lesser amount per month when plaintiff was able to work of \$21,787, for a total  
19 benefit due of \$41,791.00. Plaintiff seeks general damages in the amount of \$100,000, attorney  
20 fees of \$300,000 and any other relief as the court deems just and proper.

21          Plaintiff may by amended pleading seek injunctive relief against certain provisions  
22 included by Unum in settlement agreements.

23          Unum does not currently seek any affirmative relief.

24          **12. Settlement and ADR.**

25          The parties have agreed to mediation by a court-appointed mediator. A mediator has not  
26 yet been appointed.  
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1           **13. Consent to a Magistrate Judge.**

2           Unum declined to consent to a magistrate judge.

3           **14. Other references.**

4           The parties do not believe that this case is suitable for reference to binding arbitration, a  
5 special master, or the Judicial Panel on Multidistrict Litigation.

6           **15. Narrowing of issues.**

7           The issues in this case may be narrowed by partial summary judgment/adjudication of  
8 issues.

9           **16. Expedited scheduling.**

10          This case does not appear to be amenable to expedited scheduling.

11          **17. Scheduling.**

12          The parties propose the following dates:

13               a) All discovery, with the exception of discovery regarding expert witnesses, shall  
14 be completed on or before January 23, 2009;

15               b) The parties shall disclose expert witnesses pursuant to FRCP 26(a)(2) on or  
16 before February 7, 2009;

17               c) The parties shall complete expert discovery by April 7, 2009;

18               d) All potentially dispositive motions shall be filed on or before May 7, 2009;

19               e) Trial: On or about September 7, 2009, with a pretrial conference 21 or more  
20 days before the trial date set by the Court.

21           If the pleadings are amended to allege a class action, some minor modifications of  
22 the schedule may be required.

23          **18. Trial.**

24          As neither party timely demanded trial by jury, trial will be to the court. Trial is  
25 anticipated to last approximately five court days.  
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**19. Disclosures of non-party interested entities.**

The parties have filed the Certifications of Interested Entities or Persons required by Civil Local Rule 3-16 and do not know of any non-party having an interest in this matter, other than Unum Group, Unum's parent corporation.

Respectfully submitted,

LAW OFFICES OF LAURENCE F. PADWAY

Date: August 8, 2008

By /s/ Laurence F. Padway  
 Laurence F. Padway  
 Attorneys for Plaintiff OLIVIA U. TORRES

WILSON, ELSE, MOSKOWITZ, EDELMAN &  
DICKER LLP

Date: August 8, 2008

By /s/ Laura E. Fannon  
 Laura E. Fannon  
 Attorneys for Defendant  
 UNUM LIFE INSURANCE COMPANY  
 OF AMERICA

## ORDER

IT IS SO ORDERED.

Date:

Marilyn Hall Patel, District Judge  
United States District Court